IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

Bail Appl..No. 3971 of 2007(S)

CRIME NO.35/06 OF KOIPURAM POLICE STATION, PATHANAMTHITTA.

PETITIONERS/ACCUSED.
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1. SOMAN, AGED 5O YEARS,
S/O. RAMAKRISHNAPILLAI, POLATHALACKAL HOUSE,
KADAPRA MURI, KOIPURAM VILLAGE.

2. VIJAYAN NAIR, AGED 57,
S/O. RAGHAVAN NAIR, KIZHAKKECHIRAKKARA HOUSE,
THATTAKKATTU MURI, KOIPURAM VILLAGE.

3. SADAN, AGED 45 YEARS,
S/O. PODIYAN, MYLANICKUNNATHIL HOUSE,
KOIPURAM MURI, KOIPURAM VILLAGE.

BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR
SRI.T.P.PRADEEP

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PORSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.N. SUKUMARAN.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO.3971 OF 2007

Dated this the 5th day of July, 2007

ORDER

The petitioners are accused 2, 3 and 4 in a crime registered under Sec.302 of the IPC. In the First Information Statement, the names of the petitioners do appear; but there is no allegation of any contumacious act against them. An F.I.R. was registered as early as on 31/1/06. The alleged incident had taken place on the night of 28/1/06. In the F.I.R., the 1st accused alone is arrayed as an accused. The brother of the deceased had lodged the First Information Statement.

2. The crux of the allegations in the F.I.R. is that the deceased, the accused and the petitioners had together in a very joyous mood in an autorikshaw of one Jayakrishnan to attend the festival in a local temple. While they were travelling in the autorikshaw, there was some disagreement

and exchange of words between the 1st accused and the deceased. The 1st accused is alleged to have beaten/hit the deceased with a stone. The deceased was left by the side of the road in the injured condition and all others went home. The next morning the deceased was found lying at the place where they left him. He was removed to the hospital. Subsequently, he succumbed to the injuries after a surgery was allegedly performed on him. Investigation commenced with the 1st accused alone on the party array. In the course of investigation, the petitioners have been arrayed as accused. The principal accused has been arrested and enlarged on bail. The petitioners apprehend imminent arrest.

3. The learned counsel for the petitioners submits that, in any view of the matter, the petitioners do not deserve to be arrested and kept in custody to face an allegation under Sec.302 of the IPC. There is no specific overt act alleged to have been committed by any of the petitioners against the deceased. At worst, the allegation can only be that they did not remove the injured to the hospital after he suffered injuries allegedly at the hands of the 1st accused. The learned counsel for the petitioners points out that no one assumed or anticipated the injuries to turn out to be fatal, even going by the prosecution case. For the

alleged indiscretion committed by the petitioners - that of not removing a friend who had suffered some minor injuries to the hospital and for having left him at the place where he was and for having proceeded to their respective houses, they may not be compelled to suffer and endure the undeserved trauma of arrest and incarceration for a capital offence. This is an ideally fit case where the powers under Sec.438 of the Cr.P.C. can and ought to be invoked in favour of the petitioners, submits the learned counsel for the petitioners. The petitioners are willing to co- operate with the Investigators. They shall surrender before the Investigators and make themselves available for interrogation for any length of time as may be prescribed by this Court in the interests of justice reasonably, submits the learned counsel for the petitioners.

4. The learned Public Prosecutor does not make any concession obviously because of the gravity of the allegation raised. But called upon to point out and explain the culpable and contumacious role of the petitioners, I find the learned Public Prosecutor has not made any submission which can persuade this Court to feel that the petitioners will even remotely have to face the charge under Sec.302 of the IPC. The autorikshaw driver is the only other person other than the

accused and the deceased who had allegedly witnessed the occurrence. His statement does not specifically indicate any overt act committed by the petitioners or even sharing of the common intention/common object to cause the death of the deceased.

5. I am, in these circumstances, satisfied that notwithstanding the fact that the very serious allegation – of murder has been raised against the petitioners, they are entitled to the invocation of the extraordinary equitable discretion available to this Court. Appropriate conditions can, of course, be imposed in the interests of a fair, efficient and expeditious investigation.

6. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioners shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 12/7/07. They shall be released on regular bail on their executing bonds for Rs.25,000/- each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 4 p.m. on 13/7/07, 14/7/07, 15/7/07 and 16/7/07. During this

period it shall be open to the Investigating Officer to keep themselves in custody, interrogate them and effect recoveries, if any. Thereafter, the petitioners shall make themselves available for interrogation before the Investigating Officer on all Mondays and Fridays between 10 a.m. and 12 noon until further orders.

(iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if those directions were not issued at all;

(iv) If the petitioners were arrested prior to their surrender on 12/7/07 as directed in clause (i) above, they shall be released on their executing bonds for Rs.25,000/- each without any sureties undertaking to appear before the learned Magistrate on 12/7/07.

Sd/-

(R. BASANT, JUDGE)

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